

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| NATIONAL INDOOR FOOTBALL LEAGUE L.L.C., | : | |
| Plaintiff | : | CIVIL DIVISION |
| | : | NO. CA 2 - 548 |
| v. | : | TYPE OF PLEADING: |
| | : | Motion for Supplemental Jury Instruction |
| | : | |
| R.P.C. EMPLOYER SERVICES, INC., and DAN J. D’ALIO, | : | |
| Defendants. | : | |

PLAINTIFF’S MOTION FOR SUPPLEMENTAL JURY INSTRUCTION

AND NOW, comes the Plaintiff, NATIONAL INDOOR FOOTBALL LEAGUE, L.L.C. (hereinafter “NIFL”), by and through its attorneys, Leventry, Haschak & Rodkey, LLC, and files the foregoing Motion for a Supplemental Jury Instruction:

1. On March 20, 2006, the parties filed proposed jury instructions.
2. In its Affirmative Defenses, the Defendants allege:
 - “14. The Plaintiff breached the contract upon which it relies.”
 - “15. Plaintiff failed to comply with the requirements of coverage.”
3. Western District of Pennsylvania case law, Pennsylvania case law and Ohio case law require RPC Employer Services, Inc.’s (“RPC”) to prove its ability to perform and provide workers’ compensation under the parties Service Agreement before it can attempt to recover damages for the NIFL’s breach of/failure to comply with the parties Service Agreement as alleged in the Defendants’ Affirmative Defenses. Alabama Football, Inc. v. Greenwood, 452 F.Supp. 1191, 1194 (W.D. Pa.

1978) (holding defendant football team had to first demonstrate it could field a viable team to compete in 1975 before it had right to recover damages from a former Pittsburgh Steelers' player who repudiated the contract); Empire Properties, Inc. v. Equireal, Inc., 449 Pa. Super. 476, 492 (Pa. Super. Ct. 1996) (holding the trial court erred in instructing the jury to award damages due to the loss of a purchaser's deposit regardless of that purchaser's ability to perform under a sales agreement); Certified Computer Solutions v. Rieth & Antonelli Company, 841 N.E.2d 866, 870-71 (holding performance by a party under a contract must be proven before the party may seek damages).

4. The Plaintiff has pled the rule contained in the above-referenced case law in several pleadings including the Plaintiff's Reply to the Defendants' Motion for Summary Judgment, the Plaintiff's Brief in Support of its Reply to the Defendant's Motion for Summary Judgment and the Plaintiff's Reply to the Defendant's Motion in Limine.

5. Because the holdings of Greenwood, Empire Properties, Inc., and Certified Computer Solutions are controlling in this case, the Plaintiff is entitled to a supplemental jury instruction as follows:

“If you find that the Service Agreement required RPC Employer Services, Inc. to provide workers' compensation to the NIFL's teams players, coaches and staff situated throughout the United States, and if you further find RPC Employer Services, Inc. and Daniel D'Alio could not provide the workers' compensation coverage as promised, RPC does not have the right to recover damages against the NIFL even if you find the NIFL breached the Service Agreement and did not comply with its terms.”

WHEREFORE, Plaintiff, National Indoor Football League, respectfully requests this Court issue the supplemental jury instruction described herein.

Respectfully submitted,

s/ Timothy C. Leventry

Timothy C. Leventry, LL.M

Attorney at Law

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CERTIFICATE OF SERVICE

I, Timothy C. Leventry, do hereby certify that a true and correct copy of the foregoing Motion for Supplemental Jury Instruction was served on the parties listed below by **regular mail, email and/or fax:**

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**LEVENTRY, HASCHAK,
& RODKEY, LLC**

Dated: 3-26-06

By: s/ Timothy C. Leventry
Timothy C. Leventry, Esquire

